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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,081	07/10/2001	Ashwani Chhibber	02581-P0392A	7798
24126	7590	02/20/2004	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			FLANAGAN, BEVERLY MEINDL	
		ART UNIT	PAPER NUMBER	17
		3739		
DATE MAILED: 02/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Application No.</b> 09/902,081  <b>Examiner</b> Beverly M. Flanagan	<b>Applicant(s)</b> CHHIBBER ET AL.
<b>Period for Reply</b>	<b>Art Unit</b> 3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 08 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-9 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11-14 and 109 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

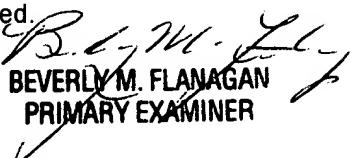
### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



BEVERLY M. FLANAGAN  
PRIMARY EXAMINER

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Entry of Amendment***

The amendment filed December 8, 2003 has been entered and made of record.

Accordingly, the status of the claims is as follows: Claims 1-9 and 11 are amended; claim 10 is canceled; claims 14 are newly added.

### ***New Grounds of Rejection***

The following new grounds of rejection are set forth:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adair (U.S. Patent No. 5,329,940) in view of Sheridan et al. (U.S. Patent No. 3,996,939).

**In regard to claims 1-3, 7-9 and 12,** Adair teaches an endotracheal tube intubation assist device 10 comprised of a handle portion 26 and an insertion section 28 having a proximal and a distal end (see Figure 1). Insertion section 28 contains an endoscope assembly 30 having a light carrying bundle and an image carrying bundle and a processing unit 36 processes images obtained from the viewing end 32 of the endoscope assembly 30 for display on a TV monitor 38 that presents a wide angle

visual image 44 (see Figure 1 and col. 5, lines 32-46). Insertion section 28 is preferably formed of a malleable material, such as specially treated stainless steel tubing that, as broadly as claimed, is substantially rigid. Figure 1 shows that insertion section 28 is curved, that the radius of curvature is constant and that the curve extends over at least two thirds of the entire length of the insertion section 28. Figures 1 and 3 also show that insertion section 28 also has a straight portion extending from a transition portion to the proximal end. Furthermore, as insertion section 28 is malleable, it can be easily bent to a required shape, considering such factor as the size and age of the patient, and will retain this customized shape during the intubation process (see col. 7, lines 55-65).

Adair teaches that an an endotracheal tube 12 that is of a standard size and configuration (see col. 4, lines 43-45) is placed over the insertion section 28 of the endoscope assembly 30 for insertion into the trachea (see Figures 1 and 2). Adair is silent as to standard sizes and configurations of endotracheal tubes. However, Sheridan et al. disclose the use of pediatric endotracheal tubes that are 3.0 mm in inner diameter (see col. 2, lines 64-66). Sheridan et al. thus exemplify a standard pediatric endotracheal tube. As contemplated by Adair, it would have been obvious for one of ordinary skill in the art to utilize the standard pediatric endotracheal tube with an innser diameter of 3.0 mm with the insertion section 28 and endoscope assembly 30 of Adair. As the inner diameter of the endotracheal tube of Sheridan et al., as used with the insertion section 28 and endoscope assembly 30 of Adair, is 3.0 mm, the outer diameter of the insertion section 28 would necessarily be less than 3.0 mm. Furthermore, as shown by Figure 5 of Adair, an annular space 52 between the outer diameter of the

insertion tube 28 and the inner diameter of the endotracheal tube 12 is necessary to permit the inflow of oxygen during intubation (see col. 7, lines 5-19). Accordingly, the outer diameter of the insertion section 28 is necessarily less than 2.5 mm to create and accommodate the annular space 52.

**In regard to claims 4-6, 13 and 14,** Adair teaches that the endotracheal tube 12 has a fitting 14 at its proximal end and the handle 26 has a counterbore 48 that functions as an attachment means for attaching the endotracheal tube 12 to the handle 26 where this attachment means is shiftable and lockable (see Figure 5 and col. 6, lines 51-64). **With further regard to claim 6,** Adair teaches a fitting 50 in communication with the counterbore 48 where an oxygen supply conduit 51 may be attached to the fitting 50 (see col. 7, lines 3-10). **In regard to claim 11,** since the outer diameter of the insertion section 28 is necessarily smaller than the inner diameter of a standard pediatric endotracheal tube having an inner diameter of 3.0 mm (as noted above), it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the outer diameter of the insertion section 2.0 mm, to create and accommodate the annular space 52.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9 and 11-14 have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments center on the Barthel et al. reference (referred to as the '917 patent in the amendment), which has not been applied in the new grounds of rejection.

***Conclusion***

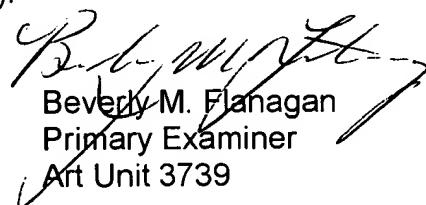
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (703) 305-7202. The examiner can normally be reached on Mondays, Tuesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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